Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment to the Commission's	)	IB Docket No. 95-41
Regulatory Policies Governing	)	
Domestic Fixed Satellites and	)	
Separate International Satellite	)	
Systems	)	
	)	
and	)	
	)	
DBSC Petition for Declaratory	)	File No. DBS-88-08/94-13DR
Rulemaking Regarding the Use of	)	
Transponders to provide	)	
International DBS Service	)	

REPORT AND ORDER

Adopted: January 19, 1996 Released: January 22, 1996

By the Commission:

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I. Introduction

1. With this Report and Order, we adopt a policy that permits all U.S.-licensed fixed satellite service ("FSS") systems, mobile satellite service ("MSS") systems, and direct-broadcast satellite service ("DBS") systems to offer both domestic and international services. This will remove outdated regulatory barriers to greater competition in satellite communications services.

2. We initiated this proceeding in April 1995 when we issued a Notice of Proposed Rulemaking ("Notice") to amend the regulatory policies governing the provision of fixed satellite services over domestic satellites and separate international satellite systems.[1] We recognized that U.S.-licensed satellites providing international services have been regulated under two different policies: (1) the Transborder Policy, which permits U.S. domestic fixed satellites ("domsats") to provide limited international services within the footprint of those satellites; and (2) the Separate Systems Policy, which permits U.S. "separate systems"[2] to provide a much wider range of international services, but restricts their provision of domestic services.[3]

3. After examining these policies in light of the trend towards a globalized economy, we concluded that changes were needed to satisfy the growing needs of customers for both domestic and international communications services. Consequently, we proposed to provide satellite operators and earth station operators with greater flexibility to serve different geographic markets while minimizing the regulatory delay associated with the satellite licensing process. Specifically, we proposed to eliminate the Transborder Policy in its entirety and regulate all U.S.-licensed fixed satellites under a modified version of the Separate Systems Policy. This would eliminate the distinction between U.S. domsats and separate systems and allow both space- and earth-segment operators to provide both domestic and international services. We proposed to apply a uniform financial showing to all U.S.-licensed satellites and provide all U.S.-licensed FSS operators a choice between common carrier and non-common carrier operations. We also asked whether we should extend this treatment to other services such as MSS and DBS, and whether, and under what conditions, we should permit non-U.S.

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[1] Amendment to the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems, Notice of Proposed Rulemaking, IB Docket No. 95-41, 10 F.C.C.Rcd. 7789 (1995) ("Notice").

[2] Separate systems are U.S.-licensed international satellites that operate separately from the worldwide Intelsat system.

[3] See Letter from James L. Buckley, Under Secretary of State for Security Assistance, Science and Technology, to F.C.C. Chairman Mark Fowler (July 23, 1981) (printed in Appendix to Transborder Satellite Video Services, 88 F.C.C.2d 258, 287 (1981) ("Transborder Satellite Decision"); Establishment of Satellite Systems Providing International Communications, 101 F.C.C.2d 1046 (1985)("Separate Systems Decision"), recon., 61 R.R.2d 649 (1986), further recon., 1 F.C.C. Rcd. 439 (1986).

satellite service providers, including those using Intelsat and Inmarsat, to serve the U.S. domestic market.

4. In response to the Notice, we received thirty-eight initial comments and sixteen reply comments from entities representing every sector of the communications industry.[4] The comments overwhelmingly support the main thrust of our proposals. A small number of commenters suggest a phased or "transition" approach to implementation of our proposals to ensure a competitive environment. Others suggest that our proposals do not go far enough in eliminating regulatory hurdles in connection with earth station licensing and they suggest alternatives.

5. By this Report and Order, we adopt the proposals set forth in the Notice for FSS, MSS, and DBS satellites. We also conclude that these policies should be implemented without delay. We will address issues relating to the provision of domestic service by non-U.S. satellites in a forthcoming Notice. In that Notice, we will also address issues related to the receipt in the United States of signals originating in foreign countries, whether via U.S. or non-U.S. satellites.

II. Discussion

A. *Modification of U.S. Satellite Policy*

1. General Policy Change

6. The Transborder and Separate Systems policies were developed at different times and in response to different circumstances. Although the policies present different criteria for determining whether to authorize U.S.-licensed satellites to provide international service, the intent of both policies was to protect Intelsat from technical or significant economic harm, as required by the Intelsat Agreements.

7. The Transborder Policy was developed in 1981, in response to requests from domsat operators to provide international public telecommunications services within the coverage areas of their satellites. Under this policy, we permit domsats to provide certain international public telecommunications services where: 1) Intelsat does not provide the service; or 2) it is clearly uneconomical or impractical to use Intelsat facilities for the service. These criteria required that international service would be primarily incidental to the domestic service (i.e., involve extensions of existing domestic networks).[5] The only exceptions to this policy involve services between the U.S. and Canada and the U.S. and Mexico. We permit more extensive two-way services between the U.S. and Canada and Mexico because Intelsat has not traditionally provided these services.[6]

8. The Separate Systems Policy was adopted in 1985 and permitted the establishment of U.S. international satellite systems separate from Intelsat. To protect Intelsat's core revenue base of

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[4] A complete list of the commenters is provided in Appendix A.

[5] Notice at ¶ 6.

[6] Id.

switched services, separate satellite systems were initially restricted to providing services through the sale or long-term lease of capacity for communications not interconnected with public switched networks (except for emergency restoration service). Before public switched service could be implemented, each system was required to gain approval from the foreign communications authority in each country to be served and to complete consultation procedures (in accordance with Article XIV(d) of the Intelsat Agreement) to ensure technical compatibility and to avoid significant economic harm to Intelsat. Because the orbital locations requested by separate satellite system applicants were deemed a limited resource for the provision of international services, separate system operators were restricted to providing domestic services on an "ancillary" basis. Thus, separate satellite system licensees could use their systems only for domestic communications reasonably related to their use of the facilities for international communications.

9. In the Notice, we recognized that with the trend towards a globalized economy, users whose communications requirements were once wholly domestic now need international space segment capacity to satisfy private-line and other two-way service requirements.[7] We concluded that current domsat operators might not be able to meet these needs under the Transborder Policy.[8] Moreover, even if the international service was consistent with the Transborder Policy, the provider would need to obtain regulatory approval before beginning service, and might, therefore, face delays in service. Similarly, we recognized that separate system customers might be unable to meet the needs of their customers for domestic service because of the "ancillary" service restriction in our Separate Systems Policy. Thus, we concluded that the public interest would be best served by modifying our policy to reflect the global nature of the communications needs by eliminating the distinction between domsats and separate systems and permitting U.S.-licensed fixed-satellite systems to provide both domestic and international service under a modified Separate Systems Policy.[9]

10. All of the commenters support our proposal to eliminate the Transborder Policy and to treat all U.S.-licensed FSS satellites under a single regulatory regime. The commenters also support eliminating the "ancillary" restriction on separate system operators. The commenters agree that the proposed changes will promote competition in both the domestic and international satellite services markets and will provide additional, much-needed C-band capacity in the domestic market.[10] They also cite a need for flexibility to provide either domestic or international service, or both, as their own business judgments may necessitate, without the need to seek additional Commission authorization.

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[7] Notice at ¶¶ 16-17.

[8] We also recognized that the decision of the U.S. Court of Appeals in Jamaica Teleport created lingering uncertainty as to whether expanded domsat service between the U.S. and non-contiguous locations can be justified under the Transborder Policy. Notice at ¶ 7 [citing Communications Satellite Corporation v. FCC, 836 F.2d 623 (D.C. Cir. 1988) ("Jamaica Teleport")].

[9] The Executive Branch has suggested that all U.S.-licensed satellites be governed by the same policy guidelines. See Letter from James Baker, Secretary of State, and Robert Mosbacher, Secretary of Commerce, to F.C.C. Chairman Alfred C. Sikes (November 27, 1991) and Letter from Bradley P. Holmes, United States Coordinator for International Communications and Information Policy, Department of State, and Gregory L. Chapados, Assistant Secretary for Communications and Information, Department of Commerce, to F.C.C. Chairman Alfred C. Sikes (January 8, 1993).

[10] The C-band includes the 3700-4200 MHz and 5925-6425 MHz frequency bands.

Hughes also notes that eliminating the Transborder Policy is a logical outgrowth of Intelsat's relaxation of concerns regarding economic harm to the Intelsat system and Comsat's decision not to oppose applications for transborder service. Hughes asserts that Intelsat, like the International Telecommunication Union ("ITU"), has never distinguished between domestic and international satellite systems providing international service.[11]

11. Separate system licensees favor eliminating the distinction between domestic and international satellites as a means of creating additional competition in the U.S. domestic market.[12] They point out that the number of domsat providers has declined from six companies when separate systems were established to three companies today -- Hughes, GE, and AT&T. Separate system operators argue that this consolidation of domsat providers has resulted in a lessening of downward price pressure and has reduced the incentive for diverse service offerings at a time when the demand for all satellite services has grown substantially.[13]

12. Although they support the central thrust of our policy, two satellite operators -- one domestic and one international -- oppose eliminating the Transborder Policy at the same time that the "ancillary" service restriction is removed from our separate system policy. According to GE, separate satellite systems have advantages in "landing rights"[14] and relationships with foreign authorities.[15] Because other countries might discriminate against new entrants, GE believes that "lockstep" elimination of the distinction between domestic and separate system satellites would disadvantage domsat licensees. To remedy this perceived imbalance, GE proposes a two-year "sunset" period for elimination of the "ancillary use" restriction on separate systems, during which period domsat operators will have an opportunity to seek landing rights in other countries in preparation for increased competition in the overall satellite market.[16] As part of this proposal, the Commission would conduct an expedited proceeding nine months prior to expiration of the sunset period to review whether domsats have faced discrimination in their attempts to obtain landing rights.[17] Alternatively, GE suggests that we narrow the restriction to bar separate systems from providing domestic service when that service is bundled with international services and the domsat operator has faced landing rights

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[11] Comments of Hughes Communications Galaxy, Inc. at 12.

[12] Comments of Columbia Communications Corporation at 3, PanAmSat at 1, Orion Network Systems, Inc. at 2.

[13] Comments of PanAmSat at 3; Columbia at 5.

[14] "Landing rights" involve one country granting permission for another country's satellite to provide service or "land" in its country. Landing rights may also involve completion of the Intelsat Article XIV(d) consultation process. Under Article XIV(d) of the Intelsat Agreement, a Party or Signatory that desires to use non-Intelsat space segment (i.e., a "separate system") for the provision of public international telecommunications service must consult with Intelsat to determine if the use of non-Intelsat space segment will cause either technical or significant economic harm.

[15] Comments of GE American Communications, Inc. at 7-9.

[16] Id. at 9-11.

[17] Id. at 9.

discrimination. GE believes this would give separate system operators an incentive to encourage foreign administrations to provide non-discriminatory landing rights rather than to block competitive entry.[18] Without these provisions, GE suggests that both the Transborder and the "ancillary use" policies remain in effect during the two-year sunset period.[19]

13. Conversely, PanAmSat opposes immediate implementation of the rules with respect to domsats because of perceived competitive advantages accruing to domsat operators. PanAmSat believes a "transition" period is needed during which domsat licensees who wish to use part or all of their satellite capacity for international services should apply to the Commission for explicit authorization.[20] Without the "transition" period, PanAmSat argues that domestic licensees will quickly offer north-south international satellite services from their present orbital locations while separate system licensees could not offer effective domestic satellite service from their present orbital locations.[21] PanAmSat believes that the Commission must make domestic orbital positions available to separate system licensees in the near term, including at least one orbit location capable of covering the continental United States (CONUS).[22] If demand for "domestic" orbital locations outstrips supply, PanAmSat suggests that the Commission cap each domestic satellite licensee to a reasonable number of orbital locations in the domestic arc.[23]

14. We do not believe the public interest would be served by delaying the benefits of our policy modifications out of concern for perceived advantages accruing to either domsats or separate satellite systems. Neither PanAmSat nor GE has persuasively shown that either domsats or separate systems will have a decisive advantage in a competitive market. Given the manner in which their respective industries have been established, domsats and separate system operators can each identify certain advantages in the short term, and we recognized in the Notice that full competition between domsats and international systems in the short term would be constrained by their current orbital locations and antenna beam patterns.[24] We anticipated, however, that operators would design next-generation systems to provide optimal coverage to those areas they wish to serve. Thus, in the medium to long term, the market will sort this out. In the meantime, we will entertain requests for reassignment of all satellites once action on the pending group of domestic FSS applications has been completed. We will not, however, reserve orbital locations with full-CONUS coverage for separate systems, as PanAmSat suggests, as this could delay service from those locations. Valuable orbital resources should be distributed to those who are ready and able to construct and launch systems.

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[18] Id. at 9-10.

[19] Id. at 10.

[20] Comments of PanAmSat at 6.

[21] Id. at 4.

[22] Id. at 6. The reply comments of domsat operators oppose reopening the current domestic processing round, citing the delay that would result in granting pending applications. See Reply comments of AT&T at 3 and Hughes at 5 n.2.

[23] Comments of PanAmSat at 6.

[24] Notice at ¶ 22.

15. In light of the intended scope of our policy modifications, we decline to impose any special regulatory treatment on domsat providers. We are not persuaded by PanAmSat's contention that domsats will leverage their dominant positions in the U.S. market to compete unfairly in the international market. Domsats already provide limited international service without special rules or restrictions. No one has presented evidence that domsat provision of such transborder service has been anticompetitive. In fact, GE Americom was previously authorized to use its domestic satellite as a separate system to provide international services without the need for special restrictions other than those contained in the Separate Systems Policy -- again without any anticompetitive consequences of which we have been made aware.[25] In light of the incremental change in the nature of the services to be provided, we believe no special conditions are necessary to effectuate this aspect of our policy modifications.

16. Similarly, we do not see a need for GE's "sunset" approach for separate system operators seeking to provide domestic service. We note other domsat licensees, Hughes and AT&T, do not agree with GE's assertion that it will be unduly difficult for domsats to obtain "landing rights" in other countries. In fact, many domsats are already providing service into foreign countries under the Transborder Policy. We have no reason to believe that foreign countries will treat domsat licensees differently than separate system licensees. Accordingly, we will not follow a "sunset" approach.

17. For similar reasons, we reject PanAmSat's argument that we reopen the filing window for domsat applications that closed last February. We recognize that the policy we adopt today may disadvantage firms whose business plans were built around the regulatory structure we now abandon. In this case, however, we cannot ignore the continuing shortage of domestic C-band capacity to which many commenters have referred.[26] Because prompt completion of the domestic processing round is the only real solution to this chronic problem, we find that it would not be in the public interest to delay the round as PanAmSat suggests.

2. Effect on U.S.-Mexico Satellite Policies

18. Both SCT, a cabinet-level ministry of the Mexican government, and Telecomm, a Mexican state corporation providing satellite and terrestrial services,[27] support the essence of our proposed modification of satellite policies, but they are concerned that implementing our proposal will have an adverse effect on the Mexican satellite industry unless certain steps are taken. They note that Mexico is pursuing goals similar to those proposed in our Notice and request that we examine our proposed policies in conjunction with Mexico's new telecommunications policies. SCT also requests

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[25] GE American Communications, Inc., 101 F.C.C.2d 1342 (1985).

[26] See combined comments of Capital Cities/ABC, Inc., CBS Inc., National Broadcasting Company, Inc. and Turner Broadcasting System, Inc. (the "Networks") at 8-9; comments of Home Box Office ("HBO") at 5-6; reply comments of The National Education Telecommunications Organization and the Education Satellite Institute ("NETO/EDSAT") at 2.

[27] SCT refers to the Secretary of Communications and Transportation of the United States of Mexico. Telecomm is an abbreviation for Telecommunicaciones de Mexico which operates Mexico's three satellites and is the only currently authorized provider of domestic satellite service in Mexico. Telecomm is under the jurisdiction of the SCT.

that we: (1) renegotiate the distribution of satellite orbital positions under the 1988 Trilateral FSS Agreement among Mexico, Canada, and the U.S. because that agreement did not foresee the change in the market nor the change in U.S. policy that would permit U.S. domsats to provide international service; (2) consider further negotiations concerning satellite opportunities before eliminating the restriction on domsats providing international service; and (3) condition satellite licenses on receipt of required foreign authorizations. Telecomm asks that a transition phase be adopted in which conditions would be placed on dominant carriers to allow time for negotiation of reciprocity agreements concerning the provision of DBS, FSS, and MSS services between Mexico and the U.S.[28] Telecomm also contends that the U.S. and Mexico should expand the existing bilateral agreement on transborder fixed-satellite service communications to cover the open market access contemplated by the Notice on a reciprocal basis.[29]

19. It appears that the concerns of Telecomm and SCT are based on the perception that the proposal in our Notice would permit service to Mexico and other countries while deferring the issue of non-U.S. satellites providing U.S. domestic service. We have emphasized throughout this proceeding that U.S. operators that desire to provide service to another country must satisfy that country's requirements for providing such service. We do not believe that a license condition to this effect is necessary since the service provider will need to obtain any necessary earth station authorization from the foreign country before it can initiate service. As noted above,[30] we will address the issue of non-U.S. satellites serving the United States in a forthcoming Notice.

20. We disagree with SCT and Telecomm that our policy modifications require reallocation of the orbital resources among the U.S. and Mexico and Canada. Although the orbital locations included in the 1988 Trilateral Arrangement were intended for domestic satellites, each country has permitted its domsats to provide a range of services to the other countries under the Transborder Policy. Further, the 1988 Trilateral Arrangement was based on the needs of the three countries. Without any evidence that these needs have proportionately changed, we do not believe a new arrangement is necessary.

21. We also do not believe that the public interest will be served by delaying implementation of the proposed policy modifications for any of the reasons suggested in the comments. Telecomm has suggested a delay until appropriate international agreements are concluded regarding satellite opportunities in the various satellite services. However, such an approach would delay the benefits of competition. The more appropriate approach, we believe, is to establish policy guidelines so that subsequent negotiations can proceed within that framework.

3. Effect on Domestic Satellite Capacity

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[28] Telecomm does not propose specific conditions but cites the classification of AT&T as dominant in the U.S. long distance market and the fact that AT&T was not permitted to enter the U.S. domestic satellite service market for three years to give other satellite systems an opportunity to become established.

[29] Telecomm argues that Mexico has so few satellites and such incomplete coverage of the U.S. that its entry into the U.S. market would not allow it to compensate sufficiently for the loss of Mexican traffic to U.S. satellites.

[30] See ¶ 5, supra.

22. Some commenters who generally support our proposal are concerned that current domsats may divert satellite capacity from the U.S. to foreign countries, resulting in insufficient domestic satellite capacity.[31] To avoid this, Capital Cities/ABC, Inc., CBS, Inc., National Broadcasting Company, Inc., and Turner Broadcasting System, Inc. (the "Networks") believe the Commission should clarify that international services provided by U.S.-licensed fixed satellites must either originate or terminate in the U.S.[32] HBO believes that we should require U.S.-licensed satellite operators using traditional domestic orbital locations to provide domestic service in lieu of international service when a shortage of domestic capacity occurs. In their reply comments, AT&T and Hughes oppose any requirement to serve the U.S. domestic market. AT&T believes that market forces will provide sufficient incentive for U.S. licensees to meet domestic needs. Hughes asserts that applicants in the current domsat processing round have proposed more than enough domsat capacity to meet domestic needs.

23. The Networks and HBO fail to demonstrate that the Commission can allocate resources better than competitive market forces, at least in the absence of market failure. Consequently, we believe that satellite operators should be permitted to use their facilities in the manner they deem most efficient, based on market forces, with no specific service requirements. This policy will actually increase the potential domestic capacity, since current separate systems will be able to supplement existing domsat capacity. Evidence suggests that market forces work in this regard. With a current temporary shortage of C-band domestic satellite capacity, separate systems licensees requested and were authorized to provide domestic service on a temporary basis. Domsat operators similarly sought to make additional capacity available to their U.S. customers by several means, including pursuing the use of non-U.S. satellites.

24. The Networks' suggestion that international service provided over U.S.-licensed fixed satellites must either originate or terminate in the U.S. is contrary to precedent regarding the use of domsats and separate systems. We have permitted both domestic and international U.S.-licensed satellite capacity to be used for service to locations that do not involve U.S. service.[33]

4. Effect on Copyrights

25. Capital Cities/ABC, HBO, and MPAA support our proposal to increase the number and variety of facilities for distributing U.S. programming, but are concerned that this liberalization may lead to increased unauthorized reception abroad.[34] To guard against this, MPAA believes the Commission should: (1) require U.S. licensees to conform to copyright requirements under notice that

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[31] Comments of HBO at 6, and General Communications, Inc. ("GCI") at 4, note 6. Reply comments of PanAmSat at 8 and NETO/EDSAT at 2.

[32] Comments of Networks at 8-9.

[33] See The Western Union Telegraph Company, File No. 823-DSS-ML-86, FCC 86-376 (released August 26, 1986) (transponders used for video services wholly outside of the U.S.). See also Pan American Satellite, 2 F.C.C. Rcd. 7011 (1987) (PanAmSat's use of four transponders to provide domestic service within Peru).

[34] MPAA is the Motion Pictures Association of America. See MPAA comments at 2-9; Capital Cities/ABC additional comments at 2-7; HBO comments at 13.

violations may result in FCC sanctions; (2) exclude delivery of programming and authorizations of service to countries that are not in compliance with copyright requirements; (3) require U.S. satellite licensees to conform to copyright compliance or be subject to FCC sanctions; and (4) apply the copyright requirements equally to all licensed satellite service providers, including DBS and MSS providers.

26. Capital Cities/ABC also proposes conditioning satellite authorizations to remedy situations where U.S. entities illegally market programming outside of the U.S. Specifically, Capital Cities/ABC says that we should require satellite operators to maintain a statement on file representing that the program originator has authorized the foreign distribution of that signal, and statements from its customers indicating that appropriate copyright clearances have been obtained from all of the customer's authorized receive points. Hughes, in contrast, does not believe that satellite operators should be accountable for any illegal activities of programming distributors. AT&T asserts that the responsibility to protect and enforce copyrights must rest with the copyright holder.

27. We recognize the importance of protecting the integrity of intellectual property, not only for authors and the industry, but for the creation of communications networks. We also recognize that unauthorized reception and illegal marketing of program material outside of the U.S. pose a problem for MPAA, Capital Cities/ABC, HBO, and other copyright holders. From the beginning of the Transborder Policy, we understood that use of domestic satellites to distribute programming to other countries could lead to unauthorized reception. Recognizing the limits on the scope of our authority in this area, we addressed this problem in two ways. First, we worked closely with the Executive Branch, which informed us of the considerable extent to which the other countries in this hemisphere protect U.S. copyrights.[35] Second, we included in our authorizations language specifying that the authorization should not be construed as authorizing the distribution of programming where appropriate copyright clearances had not been obtained.[36]

28. We agree that our new policy increases the potential for unauthorized reception and illegal marketing in our hemisphere. We cannot, however, implement the conditions recommended by Capital Cities/ABC and MPAA. In contrast to our previous efforts in this area, the proposed conditions would result in this Commission becoming directly responsible for the enforcement of copyright protection through the licensing process. This would require us to adjudicate disputes over which we have little expertise and, arguably, to intrude on functions performed by other agencies and the courts.[37]

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[35] See letter from Diana Lady Dougan, Office of the Coordinator International Communication and Information Policy, Department of State, to FCC Chairman Mark S. Fowler (March 1, 1985).

[36] E.g., Hughes Communications Galaxy, Inc., 8 F.C.C. Rcd. 7076, 7076 (Int'l Facilities Div'n 1993) (transborder authorization "shall not be construed as authorizing the distribution of programming where the appropriate copyright clearances have not been obtained or where the U.S. Government has determined that appropriate copyright protection does not otherwise exist").

[37] See 17 U.S.C. § 501(b) entitling the legal or beneficial owner of an exclusive right under copyright to institute an action in court for any infringement of that particular right.

29. Nonetheless, we will continue to work with other agencies to ensure that our authorizations reflect current copyright policy. Also, we will continue to make it clear that our authorizations do not eliminate any need for appropriate copyright clearances.

5. Impact on Intelsat

30. In our Notice, we recognized that all satellites providing public (switched) international service will still require consultation with Intelsat under Article XIV(d) to prevent technical or significant economic harm.[38] We noted, however, that Intelsat has already streamlined its Article XIV(d) consultation process in considering the economic implications of proposed satellite systems by adopting a presumption that no economic harm will result from separate satellite systems that provide non-public switched services or provide no more than 8,000 64-kbps equivalent bearer circuits interconnected with the PSN per satellite for the provision of switched interconnected services.[39] In light of these initiatives and the likely impact of our policy modifications, we concluded that use of U.S. domsats for international services would fall well within Intelsat's benchmarks.[40]

31. As we stated in the Notice, the most significant competition to Intelsat as a result of this proceeding is likely to occur in the provision of point-to-point and other two-way video and data services between the U.S. and other countries, which is now permitted only with respect to Canada and Mexico. Intelsat, however, has already determined that the use of U.S. domsats to provide private-line and other two-way services between the U.S. and certain Latin American/Caribbean locations will not cause it significant economic harm.[41] Further, domsat operators have typically not sought to provide switched services over these systems, although they were permitted to do so under the Transborder Policy. Thus, we stated that we do not expect a significant amount of public switched services to be provided as a result of this proceeding.

32. Neither Intelsat nor Comsat filed comments in response to these tentative conclusions. Thus, we believe our assumptions were correct. Nevertheless, implementing our proposed policy may necessitate additional Article XIV(d) consultations with Intelsat.[42] We will not permit domsat operators to provide international service until that service has been consulted under Article XIV(d) where required to ensure that all domsat operators act consistently with U.S. obligations to Intelsat. Similarly, to the extent that other sections of Article XIV apply to U.S. licensees plans, we will require completion of the appropriate consultations with Intelsat prior to initiating operations.

6. Conclusion

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[38] Notice at ¶ 23.

[39] Id.

[40] Notice at ¶ 23.

[41] See Intelsat Board of Governors document BG-94-81 (September 10, 1992).

[42] Under the Transborder Policy services between the U.S. and non-contiguous locations have been limited to receive-only television, audio and data services originating in the U.S. and consultations with Intelsat reflect these limitations. However, we do not expect additional economic consultations to be difficult in view of Intelsat's streamlining of the Article XIV(d) consultation process.

33. In view of all the comments on our proposal, we adopt our tentative conclusion that retaining two separate policies for U.S.-licensed satellites providing international services would maintain an unnecessary regulatory burden on both industry and government, while restricting the scope of services available to users. Modifying our policy, on the other hand, will eliminate the current two-step authorization/modification process and permit applicants to expeditiously accommodate customers with both international and domestic service requirements. In addition, we find that this policy will benefit users of satellite services by enhancing competition, increasing available capacity, and encouraging greater innovation in services at lower prices to consumers.

34. We will implement these policy changes without imposing unnecessary regulatory burdens on space station licensees. Consequently, we automatically modify all FSS space station licenses to allow the facilities to provide domestic and international services. In doing so, we recognize that transmitting to previously unserved areas may require additional frequency coordination for that satellite, both domestically and internationally, and new Article XIV(d) consultations with Intelsat. All required coordination must be completed before a licensee may begin to provide service to a new geographic area.

B. Changes to Other Space Station Rules

1. Financial Qualifications

35. In our Notice, we noted that domsat and separate systems are now subject to different financial qualification standards.[43] The domsat standard requires evidence of full financing before a license is awarded.[44] Although separate satellite system operators must ultimately demonstrate the same level of financial commitment, they are permitted to make their financial showing in two stages because of the unique circumstances applicable to separate systems.[45] Separate satellite system operators providing public switched services must first obtain an agreement from a foreign country to operate with their systems and then complete the Intelsat Article XIV(d) consultation process. Thus, it may be difficult for a separate system applicant to get full financing before it knows whether and on what terms it will be able to provide service. Consequently we issue separate system applicants a conditional grant upon the submission of a detailed business plan. Once they complete the Intelsat consultation process, separate systems operators may apply for final authorization. At that time they must submit a showing of full financing.

36. Because our policy modifications would allow separate satellite systems to provide both domestic and international service, we proposed to eliminate the two-stage financial qualification showing applicable to separate system operators. We reasoned that all applicants should be able to

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[43] Notice at ¶ 26.

[44] Id.

[45] Id. at ¶ 27.

obtain financial commitments based on the justified expectation of revenues from the provision of domestic service.[46]

37. AT&T and Hughes urge us to apply the same financial qualification test to all competitors to guard against warehousing of scarce orbital spectrum. Hughes, for example, states that as the orbital arc becomes increasingly occupied by foreign satellites capable of broad coverage, it is critical that the Commission adopt a policy that will not delay or prevent U.S. FSS licensees from occupying those locations and frequencies.[47] Hughes also notes that changes in the Intelsat coordination process remove much of the uncertainty associated with the consultation process for separate system operators.[48] AT&T adds that separate system satellites cover major portions of the U.S., allowing them to serve lucrative segments of the domestic market.[49]

38. Separate satellite system operators oppose eliminating the two-stage financial showing, citing the limited amount of domestic service that can be provided from the orbital locations they occupy and uncertainties in the consultation process.[50] Because of their orbital locations, they argue that they will still have to rely on international revenues and, therefore, will not be able to obtain financial commitments from lenders based on the expectation of revenues from domestic service.[51] Orion notes that domestic satellite operators, in contrast, have the ability to raise capital because they enjoy more predictable revenue streams resulting from stable U.S. regulatory policies and an established marketplace.[52] With respect to the consultation process, Columbia stresses that, even after the Intelsat XIV (d) consultation process is completed, there is no guarantee that operators will be able to gain access to markets within their coverage areas.[53]

39. Separate satellite system operators, therefore, believe it appropriate to continue to apply the two-stage financial qualification standard for all ocean region satellite applications that fall outside the "domestic" arc. PanAmSat contends that any other approach would preclude separate satellite system licensees from launching new satellites and enhance the concentration of satellite providers in the international as well as domestic satellite markets.[54] Orion says it would be disadvantaged with respect to foreign companies when competing for international orbital locations

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[46] Id. at ¶ 29.

[47] Hughes comments at 17.

[48] Hughes reply comments at 10-11.

[49] AT&T reply comments at 11.

[50] PanAmSat comments at 8-9, Columbia comments at 6-7 and Orion comments at 6-8.

[51] Id.

[52] Orion comments at 7.

[53] Columbia comments at 7.

[54] PanAmSat comments at 8.

because it would have to make a financial showing prior to obtaining a conditional permit.[55] If we do decide to adopt a uniform standard for U.S. licensees, however, PanAmSat and Orion favor subjecting all U.S.-licensed satellite operators, including domsats, to the two-stage financial qualifications test.[56]

40. We are sympathetic to small companies without large corporate parents or other access to the hundreds of millions of dollars needed to construct a satellite system. But our primary obligation is to ensure that the U.S. public has available to it the widest range of satellite service offerings from the greatest number of competitors possible. Our repeated experience is that applicants without ready access to the needed financing have difficulty obtaining that financing, and that their attempts are often unsuccessful. This has allowed applicants to hold orbital resources to the detriment of others willing and able to go forward immediately.[57] This ultimately results in fewer choices to the public and less competition.

41. In the traditional domsat arc, we have historically received more system applications than we can accommodate in orbit. The one-step financial showing therefore prevents those entities without the requisite financial resources from tying up scarce orbital resources and precluding qualified applicants from building their proposed systems. In eliminating the distinction between domestic and separate systems satellites, we anticipate increased demand for a wider range of orbit locations. This is because satellites operating from orbit locations over the ocean regions can still see large portions of the United States. Consequently, we believe general application of the one-step financial showing is needed to prevent service delays and to allow the maximum number of qualified applicants to go forward.

42. Nevertheless, we cannot ignore the possibility that some separate satellite system operators will be limited in their domestic coverage due to more easterly or westerly orbital locations. Significantly, we generally do not receive as many competing applications for locations well outside the traditional domestic arc. Consequently, in these circumstances, allowing an applicant some additional time in which to obtain financing should not prevent financially able applicants from implementing systems, nor delay service to the public. We will therefore allow operators who apply for orbit locations in uncongested portions of the orbital arc to make a two-step financial showing upon appropriate request. All such requests should include the costs of construction, launch, and first-year operation of the particular satellite.[58] In addition, the request should include specific information regarding attempts to obtain adequate financing and an explanation as to why such financing could not be obtained. Any applicant requesting a two-step process will have the burden of demonstrating that

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[55] Orion comments at 8.

[56] PanAmSat comments at 8; Orion comments at 9.

[57] Notice at ¶ 26. See also, e.g., National Exchange Satellite, Inc., 7 F.C.C. Rcd. 1990 (Com. Car. Bur. 1992); Rainbow Satellite, Inc., Mimeo No. 2584 (Com. Car. Bur., released Feb. 14, 1985); United States Satellite Systems, Inc., Mimeo No. 2583 (Com. Car. Bur., released Feb. 14, 1985) (domestic satellite licenses declared null and void for failure to begin implementation as required by license). In addition, Geostar Corporation, a start-up company licensed in the radiodetermination satellite service, declared bankruptcy nearly five years after its licenses were issued. It had not built any of its satellites.

[58] This information is currently required as part of the initial financial qualifications showing separate satellite system operators must make.

use of the two-step process will not foster the misuse of scarce orbital resources, and that the public interest would therefore not be served by the application of our one-step rule.

43. All pending separate system applications filed after the release date of the Notice have had notice of our proposed rule change and therefore we will require them to meet our one-step financial requirement. We will permit these applicants to file amendments within 30 days of the effective date of this Report and Order to bring their applications into compliance with the financial standard or to seek a waiver. Separate system applications filed prior to the release date of the Notice will not need to meet the one-step standard. Rather, they will be subject to the two-stage separate systems financial requirement applicable at that time.

2. Processing Rounds

44. Any applications filed after the adoption date of this order will be considered in future "consolidated" FSS rounds. These applications will be considered after we act on all pending separate system applications and on the pending domsat processing round.

3. Regulatory Classification

45. Under our current policy, domsat operators are permitted to sell or lease transponders on a non-common carrier basis if we find that doing so will not unduly reduce the number of transponders available on a common carrier basis.[59] In determining whether a particular request should be granted, we have relied upon the analysis set forth in NARUC I.[60] Specifically, we may regulate an entity as a private carrier under NARUC I unless: (1) there is or should be any legal compulsion to serve the public indifferently; or (2) there are reasons implicit in the nature of the service to expect that the entity will in fact hold itself out indifferently to the eligible user public.[61] This analysis was inapplicable to separate satellite systems since they were established for the provision of non-common carrier services.

46. We tentatively concluded in our Notice that there is no longer a need to require domsat licensees to provide capacity on a common carrier basis.[62] With respect to the first prong of NARUC I, we concluded that sufficient competitive capacity is and will continue to be available to assure the U.S. public ample access to fixed-satellite services.[63] With regard to the second prong of NARUC I, we found little likelihood that non-common carrier domsats will hold themselves out indifferently to serve the public and that stable, long-term contractual offerings to individual customers

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[59] Domestic Fixed-Satellite Transponder Sales, 90 F.C.C.2d 1238, 1252 (1982), aff'd sub nom. Wold Communications, Inc. v. FCC, 735 F.2d 1465 (D.C Cir. 1984), modified, Martin Marietta Communications Systems, 60 R.R.2d 779 (1986).

[60] National Ass'n of Regulatory Utility Commissioners v. FCC, 525 F.2d 630 (D.C. Cir.), cert. denied, 425 U.S. 992 (1976).

[61] NARUC I, 525 F.2d at 642; Notice at ¶ 30.

[62] Id. at ¶ 31.

[63] Id. at ¶ 31.

of technically and operationally distinct portions of a satellite fall short of the indiscriminate offerings contemplated in NARUC I. We also noted that restrictions on separate system offerings have been eroded and no longer limit separate system operators to providing customized services. We, therefore, proposed to permit but not require U.S. space station licensees providing international service to do so on a common carrier basis, if these offerings further their business plans. Accordingly, we proposed to allow all U.S. FSS licensees and applicants to elect whether to provide service on a common carrier or non-common carrier basis.[64]

47. Domsat and separate system operators support this proposal. Noting that most domestic fixed satellite services are already offered on a non-common carrier basis, HBO states that there is no evidence to support a continuing requirement for satellite capacity to be provided on a common carrier basis.[65] Comsat, while agreeing with our proposal, stresses that the regulatory classification must, as a matter of law, be determined by the manner in which services are actually offered.[66]

48. In contrast, GCI and the Networks are concerned that permitting satellite operators to choose their regulatory classification might endanger the amount of capacity available for domestic service requirements. The Networks oppose changing the current obligation of satellite operators to make available a sufficient amount of capacity on a common carrier basis. Citing the shortage of domestic C-band satellite capacity, and increased rates for occasional television service, the Networks fear that operators may exit the occasional use market, and serve only full-time customers, if relieved of their obligation to provide service on a common carrier basis. The Networks also believe that the public should be allowed to comment on applications by satellite operators who elect to provide capacity on a non-common carrier basis.

49. We adopt our proposal to permit satellite operators to elect to operate on a common carrier or non-common carrier basis. As we stated in the Notice, *no transponder sales application has been opposed in the last decade*. Despite the routine approval of these requests, several operators have chosen to continue to offer space segment capacity on a common carrier basis. This suggests that market forces are sufficient to provide enough common carrier capacity. Neither the Networks nor GCI has presented any evidence to suggest that this will not continue. The current shortage of domestic C-band satellite capacity is not the result of capacity being offered on a non-common carrier basis. Rather, the shortage is attributable primarily to the failure of AT&T's Telstar 402 satellite and the fact that several older satellites are nearing retirement at the same time. Further, we agree with COMSAT that any such election should be based on the realities of the service provided consistent with the factors set forth in NARUC I. Thus, a U.S. FSS licensee, whether formerly operating as a domsat or a separate system, must operate on a common carrier basis if it chooses to make indiscriminate offerings to the public under the NARUC I criteria.

50. We note that while applicants will need to elect their regulatory classification in their applications, this election will not be of decisional significance. Rather, the election will be for

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[64] Id. at ¶ 33.

[65] HBO comments at 15.

[66] Comsat comments at 14.

informational purposes only -- to enable us to apply Title II regulations to common carriers. Similarly, licensees wishing to change their regulatory classification should notify us in writing of such change, including the date on which they intend to do so. No prior approval from the Commission will be necessary. Commission staff will include the notification of a change in status as an informational listing in the Satellite and Radiocommunication Division's weekly Public Notice of actions taken. The staff will also place a copy of the notification in the station file.

D. Changes to Earth Station Rules.

51. Under our current licensing scheme, earth stations are classified as either domestic or international depending on the satellites that will be accessed.[67] Domestic earth stations are typically licensed to communicate with all domestic satellites in the "domestic" portion of the arc, referred to for licensing purposes as "ALSAT." International earth stations are licensed to communicate with specific U.S.-licensed separate systems and non-U.S. international satellites. Under this licensing scheme, domestic earth station licenses have to be modified to communicate with any satellites not included in the "ALSAT" designation and international earth station licenses have to be modified to communicate with any satellite not designated on the license.

52. In light of our proposal to eliminate the distinction between domestic and separate system satellites, we tentatively concluded in our Notice that there is no reason to retain any distinction between domestic and international earth stations using U.S.-licensed space segment.[68] Accordingly, we proposed to retain the "ALSAT" designation, but broaden its meaning to include all U.S.-licensed satellites providing fixed-satellite service.[69] We noted that expanding the "ALSAT" designation will reduce the number of license modification applications, while allowing operators to provide service immediately consistent with Intelsat Article XIV(d) consultations. We recognized, however, that our proposal could require additional coordination between earth stations operating in the C-band and terrestrial C-band facilities.[70]

53. All of the comments support this proposal.[71] The commenters agree that the proposed modifications will avoid the need for earth station license modification requests, result in substantial savings, allow more rapid service to customers, and enhance competition by allowing FSS earth station

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[67] Notice at ¶ 34.

[68] Notice at ¶ 36. We will consider earth stations using non-U.S. licensed space segment in our forthcoming Notice of Proposed Rulemaking. This will include issues relating to both transmit/receive and receive-only earth stations.

[69] Id.

[70] Id.

[71] Esatel further recommends that we adopt a policy granting blanket licenses to cover all earth stations at a given teleport site. This proposal is more appropriately raised in the context of our ongoing rulemaking to streamline earth and space station application and processing requirements. See Streamlining the Commission's Rules and Regulations for Satellite Application and Licensing Procedures, 10 F.C.C. Rcd. 10624 (1995). We will consider Esatel's proposal in that proceeding.

operators a broader choice of satellites with which to communicate. In particular, the Networks stress that the modification will enhance the operational flexibility of end users such as broadcasters that use different earth stations and need to access a variety of satellite systems to transmit and receive programming materials.

54. The comments also favor a simplified procedure for modifying existing earth station licenses to incorporate domestic and international transmissions to all U.S.-licensed satellites. Where no frequency coordination issues are presented, the comments suggest that the modification be automatic. If frequency coordination is required, Group W suggests that we permit access to a new satellite immediately upon certification or notification to the FCC that appropriate frequency coordination procedures have been completed. GCI believes that licensees operating earth stations in the C-band should be allowed to submit the additional frequency coordination studies and that such filings should not be placed on public notice. HBO proposes that the modification be made self-executing if no opposition is filed within 30 days after public notice of the filing of the appropriate coordination data.[72]

55. We adopt our proposal to expand the ALSAT designation. We further agree that the proposal should be implemented with no unnecessary regulatory burden. We recognize, however, that earth station operators in the C-band that wish to communicate with an expanded number of satellites may need to complete additional frequency coordination with respect to terrestrial operators sharing the band. Consequently, we automatically modify all earth station licenses to allow the facilities to access all U.S.-licensed satellites, provided that the operator submits, when necessary, a frequency coordination analysis verifying that the expanded operations are fully coordinated with other primary users in the band under the Part 25 coordination requirements.[73]

E. Other Services

56. In our Notice, we recognized that U.S.-licensed satellite systems providing services other than domestic fixed satellite services may be similarly constrained in the geographic reach of their services.[74] We requested comment on whether licensees of geostationary systems that provide mobile and broadcast services should be permitted to provide both domestic and international service subject to U.S. international coordination obligations. In addition, we noted that there might be specific considerations for MSS and DBS that could dictate a different domestic/international policy. We asked, for instance, whether authorizing U.S.-licensed DBS providers to broadcast to customers in

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[72] HBO notes that this is the same procedure followed for registration of domestic C-band receive-only earth stations.

[73] HBO notes that despite phased relaxation of interconnection restrictions on separate systems, licenses still contain conditions that prohibit all interconnection of separate system traffic with the public switched network ("PSN"). These conditions have remained because of the regulatory burden of modifying licenses to reflect every new change in Separate Systems Policy permitting increased numbers of circuits capable of being interconnected with the PSN. We agree that it is unduly burdensome to require each licensee to file a license modification each time the circuit ceiling is raised. Accordingly, we deem the most recent PSN circuit modification (currently 8,000 per satellite) as well as future modifications as incorporated into all earth station licenses.

[74] Notice at ¶ 37.

other countries would be inconsistent with the "Plan" that assigned DBS orbit locations internationally, adopted at the 1983 Regional Administrative Radio Conference (RARC-83). We also asked whether receipt in the U.S. of DBS programming transmitted from earth stations in foreign countries would be inconsistent with the provisions of International Telecommunications Union (ITU) Appendix 30A regarding feeder links for DBS. Finally, we requested comments on any other matters bearing on the issue of whether and to what extent U.S.-licensed geostationary satellite systems should be permitted to provide international broadcast and mobile services.[75]

1. Direct Broadcast Satellite Service

a. Background

57. DBS, or Broadcast Satellite Service ("BSS") as it is referred to internationally, is a direct-to-home service that uses geostationary satellites to transmit to user earth terminals. DBS orbital locations and channels have been assigned to countries in Region 2 -- which includes North, Central, and South America -- under a Plan adopted at RARC-83. The Plan allocates 32 channels at each of eight orbital locations to the United States from which to provide domestic DBS service.[76] The Plan also specifies the technical parameters under which DBS systems are to operate. Nevertheless, the Plan may be modified to permit non-standard satellites and operations, provided that they do not affect satellites operating in compliance with the Plan or other services. Procedures for modifying the Plan are set forth in Appendices 30[77] and 30A[78] of the ITU Regulations. Modifications to the regional BSS Plans require coordination with countries that have assignments in the Plan that can be affected by such modifications.

58. The commenters generally agree that it is possible for U.S. licensees to provide DBS service to foreign countries in a manner consistent with the Region 2 Plan. They also support a policy that would permit U.S. DBS operators to provide international service, although they disagree about the timing for implementation of this policy and the conditions under which international service should be authorized.

59. Direct Broadcasting Satellite Corporation ("DBSC"), DirecTV, which is an affiliate of Hughes Communications Galaxy, and Satellite CD Radio Inc. assert that DBS licensees should be allowed to provide international service, insofar as this can be done consistent with treaty requirements. They argue that if we permit FSS licensees to devote as much or as little of their

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[75] Notice at ¶ 38. Issues involving whether, and under what conditions, non-U.S. DBS satellites should be able to serve the United States will be considered in a further Notice. These include issues related to deregulation of international receive-only earth stations.

[76] The Region 2 BSS Plan was written primarily for domestic use, but it does not preclude the provision of international DBS service. ITU Radio Regulations, Appendix 30.

[77] Appendix 30 describes Region 2 BSS downlinks between 12.2-12.7 GHz.

[78] Appendix 30A describes Region 2 BSS feeder links between 17.3-17.8 GHz.

facilities to domestic or international service as they wish -- including direct-to-home service -- we should provide the same opportunity to DBS licensees.[79]

60. In joint comments, the Networks (ABC, NBC, CBS, and Turner Broadcasting System, Inc.) recommend that we postpone consideration of issues concerning international DBS until we resolve the issues raised in relaxing restrictions on FSS providers. These joint commenters urge the Commission to address the FSS matters immediately and to resolve, at a later time, the complex issues pertaining to international DBS.

61. Corporación Medcom, S.A. de C.V. ("Medcom"), a privately-held Mexican corporation authorized to provide domestic DBS service in Mexico, points out that Mexico recently passed a law that would enable U.S.-licensed DBS providers to market their services in Mexico upon a U.S./Mexico bilateral treaty involving reciprocal market access. Medcom asks that any FCC policy regarding the provision of international DBS service by U.S. licensees make clear the conditions under which the U.S. DBS market will be open to foreign competition. Medcom states that the growing "grey market"[80] is inhibiting the development of Mexican-licensed DBS. Medcom, therefore, urges us to adopt, as part of any deregulatory package, an enforcement mechanism that will enable a foreign DBS provider whose home market is being served by an unauthorized U.S.-based satellite service to protect its interests.

62. While agreeing that it would be beneficial to relax geographic constraints on U.S.-licensed satellite communications systems, HBO urges us to maintain a policy where the orbital positions best suited to provide service in the United States are used primarily to meet domestic communications needs. Accordingly, HBO suggests that we approve proposals to provide international service from such orbital positions only upon a showing that doing so would not cause a domestic shortage. It also asks that we periodically assess domestic capacity and require service adjustments when necessary.

63. Separate from this proceeding, DBSC filed a Petition for Declaratory Ruling regarding the use of "spare" transponders to provide international DBS service.[81] DBSC holds a construction permit for two eleven-channel DBS satellites at 61.5 degrees W.L. and 175 degrees W.L. DBSC states that it plans to design each satellite with 16 transponders. In its Petition, DBSC requests authority to use the five "spare" or "extra" transponders on each satellite for international service, subject to two conditions: (1) that there would be no consequent reduction in the use of its satellites

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[79] DBSC Comments at 9.

[80] The "grey market" described here by Medcom and in subsequent comments by Cancom involves transborder reception by Mexican and Canadian citizens of DBS and "quasi-DBS" signals (*i.e.*, C-band and Ku-band direct-to-home services) from U.S.-licensed satellites in violation of national law. Some foreign citizens apparently buy equipment for receiving and decoding these signals from U.S.-licensed dealers who register them for service subscriptions using U.S. mailing addresses.

[81] See Public Notice, DBS/PN 94-16, released Sept. 27, 1994. The petition was styled as an Application for Modification of Permit, but the Chief of the Mass Media Bureau's Video Services Division notified DBSC that inasmuch as it was requesting a general statement of policy rather than any specific change in its authorization the filing would be treated as a motion for declaratory ruling. Letter from Barbara A. Kreisman to DBSC dated Sept. 23, 1994.

for provision of domestic DBS, and (2) that full compliance with all relevant treaty obligations be ensured. DBSC submitted an engineering study with its Petition to demonstrate that compatible use is technically feasible.[82]

64. Local-DBS, Inc., a DBS licensee, supports DBSC's Petition. Local-DBS notes that the proposal was consistent with "the Clinton Administration's goal [of] opening the satellite marketplace to fair and effective competition," citing Congressional testimony by FCC Chairman Reed Hundt.[83] Local-DBS adds that several applicants in the recent round of FSS applications have proposed to provide international direct-to-home services, underscoring the importance of affording DBS operators flexibility comparable to that enjoyed by FSS operators in order to promote fair competition between services.

65. Canadian Satellite Communications, Inc. ("Cancom"), a corporation licensed by the Canadian Radio-television and Telecommunications Commission to distribute radio and television signals by satellite, opposes DBSC's petition. It contends that adoption of a general policy permitting U.S. licensees to provide international DBS service could undercut Canadian regulatory policies designed to preserve Canada's cultural identity. Cancom states that there is no apparent need for the Commission to make such a broad policy decision at this time. It urges us to rule only on DBSC's specific proposal now, and to consider future proposals on a case-by-case basis. Cancom also states that the Commission should condition any authorization that it issues for international DBS on approval by the foreign administrations involved. Finally, it recommends that we require any companies authorized to provide international DBS to exercise due diligence to ensure that their services are not provided to foreign users on a "grey market" basis. Dominion Video Satellite, Inc. filed a motion to deny DBSC's "application", insofar as granting the authority requested would effectively revise its construction schedule.

b. Discussion

66. International DBS service from a U.S. DBS satellite may require coordination with foreign administrations. However, we see no reason why the Commission should impose any barriers on a licensee willing to provide international DBS service, in accordance with U.S. treaty obligations, from an orbital location assigned to the United States for DBS service.[84]

67. On the contrary, we should encourage international DBS service since it would advance the public interest in a number of ways. First, permitting international service would expand the potential audience for American programming, and could stimulate economic growth. Second,

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[82] DBSC submitted a hypothetical case of service to Panama involving co-channel transmission of a narrow beam casting a footprint over Panama from a satellite in the 61.5 degree position. See Petition, Exhibit B, at 1-7.

[83] Testimony of Chairman Hundt before the House Subcommittee on Telecommunications on the Global Information Infrastructure and the Role of Satellites, July 28, 1994.

[84] All DBS satellites providing international service will require technical compatibility coordination with Intelsat under Article XIV(e) of the Intelsat Agreement as a "specialized telecommunications services" provider. Economic harm consultation is not required under Article XIV(e).

importing uplinked foreign programming would enable operators to better satisfy the needs and desires of enhance services to multi-lingual subscribers in the U.S. Third, operators would enjoy economies of scale for both themselves and their customers if non-English language programs could simultaneously serve same-language communities in the U.S. and in foreign markets. Finally, the possibility of providing international DBS services to Pacific Rim nations could make the western-most DBS orbital locations allocated to the United States -- from which no permittee appears ready to operate in the near future -- more attractive platforms, which could accelerate development of those locations and thereby accelerate the delivery of DBS service to Hawaii and Alaska. None of the commenters have presented any reason why we should delay these benefits to the public.

68. We disagree with HBO that there is a need for the government to monitor the industry to ensure that sufficient services are being made available to the United States. As we discussed with respect to the FSS industry, we believe market forces will determine the appropriate balance between international and domestic offerings. Further, we do not agree with Cancom and Medcom that revising our DBS policy compromises the rights of foreign administrations. Those administrations would retain all rights they now have to license the provision of international DBS service to their countries. The Commission's refusal to impose an additional layer of regulation upon those seeking to deliver international DBS service from orbital locations allocated to the U.S. in no way diminishes those rights.

69. While we believe the public interest will be served by allowing DBS licensees to provide domestic or international service from their authorized channels, we believe there are significant obstacles to DBSC or any other DBS operator providing international DBS service using "spare" channels not assigned to it. At each of the orbital locations at which DBSC is assigned eleven channels, nearly all of the remaining 21 channels allocated to the United States have been, or soon will be, assigned to other DBS permittees for domestic DBS service. Thus, in this regard DBSC mischaracterizes these channels as "spare" channels. Instead, before it can provide international service, DBSC would have to obtain the consent of the permittees holding assignments for the channels on which it seeks to provide international service, and ensure that its international service will not cause harmful interference to other DBS premittees.

70. Therefore, we conclude that U.S. geostationary DBS satellite systems should be permitted to provide both domestic and international services from their authorized channels without additional approval from the Commission.[85] Prior to commencing such service, licensees must ensure that (a) the technical and operational parameters of the channels have been successfully coordinated, consistent with U.S. treaty requirements; and (b) they comply with FCC service rules for DBS channels assigned for U.S. domestic use.[86] Naturally, a foreign administration may impose other

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[85] This conclusion about DBS service does not affect the Digitial Audio Radio Satellite Service, which is the subject of another pending proceeding. See Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band, FCC 95-229 (released June 15, 1995).

[86] See Revision of Rules and Policies for the Direct Broadcast Satellite Service, FCC 95-507 (released Dec. 15, 1995). Licensees should also bear in mind that Section 25 of the 1992 Cable Act mandates that the Commission adopt rules imposing public interest requirements upon each provider of DBS service and directs the Commission to require each such operator providing video programming to reserve four to seven percent of its total channel capacity exclusively for non-commercial, educational,

conditions before it permits a U.S. operator to do business there. The Commission cannot preempt such conditions, but neither will we give them independent enforcement under U.S. law.[87]

2. The Mobile Satellite Service

a. Background

71. MSS provides seamless data or voice communications services to maritime land, and aeronautical mobile users anywhere. It can also serve FSS users. MSS encompasses a number of important services, including position location, search and rescue communication, disaster management communications, and messaging services. The Commission licensed the first U.S. commercial MSS system in 1989, when we granted American Mobile Satellite Corporation ("AMSC") a license to construct and launch a geostationary MSS system to serve the United States. Last year, we authorized the first low-Earth orbit ("LEO") MSS systems. Specifically, we authorized Motorola, LQSS, and TRW to construct and launch voice and data systems. We have authorized Orbcomm, VITA, and Starsys to construct and launch data-only systems. In granting these licenses, we emphasized that LEO systems, by virtue of their non-geostationary satellite orbits, are inherently capable of providing global service. Indeed, we required the Big LEO systems to be designed to provide global coverage. In doing so, we noted the significant benefits in facilitating the creation of the global information infrastructure. We asked in our Notice whether we should permit U.S. licensed geostationary MSS systems to provide both domestic and international services, as well.

72. Most commenters recommend that we defer, to a future proceeding, the issues concerning MSS.[88] Two of these commenters -- Loral/Qualcomm and Constellation -- contend that there are characteristics unique to MSS that any change in the Commission's MSS policies should take

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or informational programming. See 47 U.S.C. § 335(b). While the Commission was in the process of conducting a rulemaking to effectuate these congressional directives, a United States District Court struck down the non-commercial carriage obligations of Section 25, but the decision has been stayed pending appeal. See Daniels Cablevision, Inc. v. United States, 835 F. Supp. 1 (D.D.C. 1993), appeals pending sub nom. Time Warner Entertainment Co. v. FCC, No. 93-5349 and consolidated cases (D.C. Cir.). Nothing in this order should be taken to excuse international DBS providers from any public service obligations ultimately imposed.

[87] International law does not give any nation an absolute right of "prior consent" before information is sent across its borders. Indeed, Article 19 of the United Nations Universal Declaration of Human Rights confirms a fundamental human right both to send and to receive information across national boundaries. Universal Declaration on Human Rights, 1948 Y.B. ON HUM. RTS. 459, U.N. Doc. A/811. However, U.S.-licensed DBS operators will not be protected from interference in nations where they operate without proper authority. Resolution GT PLEN-1, International Telecommunication Union, 1995 World Radiocommunication Conference, Annex, at ¶ 4.3.5. Thus, purely as a practical matter, we expect U.S. operators to submit to applicable national processes wherever they attempt to use DBS frequencies on a for-profit basis.

[88] Comments favoring deferral of action on MSS issues were filed by: The Networks; Constellation Communications, Inc.; IDB Mobile; Loral/Qualcomm Partnership, L.P.; Motorola Satellite Communications, Inc.; Worldcom, Inc; and TRW, Inc.

into account. For example, they assert that AMSC's system has not been successfully coordinated internationally. In addition, they note that geostationary MSS technology generally does not permit more than one system to serve a geographic area using the same frequencies, resulting in far fewer MSS systems than FSS systems. Thus, they request that we defer any policy decision concerning geostationary systems to take into account the implications for U.S.-licensed LEO systems. In contrast, COMSAT supports eliminating geographic barriers for U.S. geostationary MSS systems provided that COMSAT is also permitted to provide domestic and international services.

b. Discussion

73. We conclude that it is in the public interest to permit U.S.-licensed geostationary MSS systems to provide both domestic and international service.[89] As Comsat notes, customer demands for communication services are becoming increasingly global. In our Big LEO Rulemaking,[90] we addressed the many public benefits associated with global MSS systems and required the systems in that proceeding to be capable of providing global coverage. We conclude that permitting U.S.-licensed geostationary MSS systems to provide both domestic and international services will offer similar benefits, including increased competition, increased consumer choices, and further development of the global information infrastructure. The Big LEO licensees have not provided any valid reason to delay these public interest benefits. The fact that there are fewer MSS Systems than FSS systems or that spectrum coordination for the AMSC system has not yet been completed has little bearing on whether we should permit AMSC or other U.S. MSS licensees to extend its service offerings internationally.[91] We conclude that the record is sufficiently developed to allow us to implement a policy that would permit geostationary MSS systems, as their counterpart LEO MSS systems and geostationary FSS and DBS systems, to provide international as well as domestic service. Before an MSS licensee can actually provide service in a foreign territory, of course it must complete its international frequency coordination obligations and obtain any required approvals from the countries it wishes to serve.

III. Conclusion

74. In this Report and Order, we eliminate the outdated regulatory framework that distinguished domsats from separate systems and allow all U.S.-licensed satellites in the fixed satellite service to provide both domestic and international services. To effectuate this, we eliminate the Transborder Policy in its entirety and regulate all U.S.-licensed fixed satellites under a modified Separate Systems Policy. In doing so, we enhance the opportunity for the provision of innovative satellite service offerings without artificial regulatory barriers. In addition, we extend the benefits of this new policy to other services by permitting DBS satellites and geostationary MSS satellites to provide both domestic and international services.

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[89] We will discuss issues involving Comsat's provision of domestic service, including MSS, in our forthcoming Notice.

[90] See In re Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Bands, 9 F.C.C. Rcd. 4936 (1994) (the "Big LEO Order").

[91] In fact, we note that coordination has not yet been completed for the Big LEO or Little LEO systems.

IV. Final Regulatory Flexibility Analysis

75. Need for Rules and Objective. We have codified proposed rules that will permit Big LEO systems to be licensed. Our objectives have been to promote efficiency and innovation in the licensing and use of the electromagnetic spectrum, to develop competitive and innovative communications systems, and to promote effective and adaptive regulations.

76. Issues Raised by the Public in Response to the Initial Analysis. No comments were received specifically in response to the Initial Regulatory Flexibility Analysis. We have, however, taken into account all issues raised by the public in response to the proposed rules. In certain instances, we have eliminated or modified our proposed rules in response those comments.

77. Alternatives that Would Lessen Impact. The minimal regulatory burden that we have imposed is necessary in order to carry out our duties under the Communications Act and other Federal statutes. We will continue to examine these requirements in an effort to eliminate unnecessary regulations and to minimize significant economic impact on small businesses.

V. Ordering Clauses

78. Accordingly, IT IS ORDERED that Part 25 of the Commission's rules are amended as specified in Appendix C, effective thirty (30) days after publication in the Federal Register.

79. IT IS FURTHER ORDERED that DBSC's petition to use transponders to provide international DBS service IS GRANTED.

80. This action is taken pursuant to Sections 4 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154, 303(r), and Section 201(c) of the Communications Satellite Act of 1962, 47 U.S.C. §721(c).

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary